

MINTZ LEVIN  
COHN FERRIS  
GLOVSKY AND  
POPEO PC

Washington  
Boston  
New York  
Reston  
New Haven

701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
202 434 7300  
202 434 7400 fax  
[www.mintz.com](http://www.mintz.com)

**Michael H. Pryor**

Direct dial (202) 434-7365  
[mhpryor@mintz.com](mailto:mhpryor@mintz.com)

February 13, 2003

Via Electronic Filing

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Notice of Ex Parte Communication, CC Docket Nos. 01-338 and 96-98

Dear Ms. Dortch:

On Thursday, February 13, 2003, Jake Jennings, Vice President of Regulatory Affairs, NewSouth Communications, and the undersigned met with Christopher Libertelli, Legal Advisor to Chairman Michael K. Powell. We reiterated NewSouth's support for a route-by-route analysis for unbundled dedicated transport and generally for the test for impairment proposed by Allegiance Telecom Inc., on January 30, 2003. We also discussed NewSouth's concerns with adopting a strict test which would require removal of dedicated transport on a route based on a contestable market theory. NewSouth also reiterated its concerns as expressed in previous filings with usage restriction requirements that would impede the ability of competitive carriers effectively to utilize network elements for which an impairment test had been met. Consistent with its previous filings, NewSouth reiterated its view that a granular impairment analysis obviated the need for additional usage restrictions. If restrictions are required, they should be narrowly focused on traditional special access services as NewSouth described in its February 5, 2003 *ex parte* submission. NewSouth also stressed the importance of continuing to have access to DS-1 loops in hybrid loop/fiber facilities utilizing ILDC or NGDLC technology.

Respectfully submitted,

/s/

Michael H. Pryor

cc: Christopher Libertelli  
Jake E. Jennings